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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

9 RONALD R. PAGLIAI,)
10 Plaintiff,)
11 v.)
12 JOSEPH ARPAIO,)
13 Defendant.)

CIV 04-02844 PHX DGC (MEA)
ORDER OF DISMISSAL WITHOUT
PREJUDICE

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15 Plaintiff, while an inmate at the Maricopa County
16 Durango Jail in Phoenix, Arizona, filed a *pro se* complaint
17 pursuant to 42 U.S.C. § 1983 on December 9, 2004. On April 13,
18 2005, the Court issued an order directing monthly payments be
19 made from Plaintiff's inmate account and sent a copy of the
20 payment order to Plaintiff. The Court's order also required
21 Plaintiff to complete and return a service packet for Defendant
22 to the Court by May 3, 2005.

23 Plaintiff was apparently released from the custody of
24 the Maricopa County Sheriff's Department prior to April 18,
25 2005.¹ See Docket No. 5. Plaintiff has not provided the Court
26 with his current address and Plaintiff never returned a service

27 ¹ Because Plaintiff was released from custody, Plaintiff is
28 obligated to pay the filing fee for his section 1983 action within one
month of being released from custody.

1 packet to the Court.

2 Rule 3.4, Local Rules of Civil Procedure for the United
3 States District Court for the District of Arizona, requires
4 prisoner-litigants to comply with instructions attached to the
5 Court-approved complaint form for use in section 1983 actions.
6 Those instructions provide: "You must immediately notify the
7 clerk ... in writing of any change in your mailing address.
8 Failure to notify the court of any change in your mailing
9 address may result in the dismissal of your case."

10 Plaintiff has a general duty to prosecute this case.
11 Fidelity Phila. Trust Co. v. Pioche Mines Consol., Inc., 587
12 F.2d 27, 29 (9th Cir. 1978). In this regard, it is the duty of
13 a plaintiff who has filed a *pro se* action to keep the Court
14 apprised of his current address and to comply with the Court's
15 orders in a timely fashion. This Court does not have an
16 affirmative obligation to locate Plaintiff. "A party, not the
17 district court, bears the burden of keeping the court apprised
18 of any changes in his mailing address." Carey v. King, 856 F.2d
19 1439, 1441 (9th Cir. 1988). Plaintiff's failure to keep the
20 Court informed of his new address constitutes failure to
21 prosecute.

22 Rule 41(b) of the Federal Rules of Civil Procedure
23 provides that "[f]or failure of the plaintiff to prosecute or to
24 comply with these rules or any order of court, a defendant may
25 move for dismissal of an action." In Link v. Wabash Railroad
26 Co., 370 U.S. 626, 629-31 (1962), the Supreme Court recognized
27 that a federal district court has the inherent power to dismiss
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1 a case *sua sponte* for failure to prosecute, even though the
2 language of Rule 41(b) of the Federal Rules of Civil Procedure
3 appears to require a motion from a party. Moreover, in
4 appropriate circumstances, the Court may dismiss a complaint for
5 failure to prosecute even without notice or hearing. Id. at
6 633.

7 In determining whether Plaintiff's failure to prosecute
8 warrants dismissal of the case, the Court must weigh the
9 following five factors: "(1) the public's interest in
10 expeditious resolution of litigation; (2) the court's need to
11 manage its docket; (3) the risk of prejudice to the defendants;
12 (4) the public policy favoring disposition of cases on their
13 merits; and (5) the availability of less drastic sanctions."
14 Carey, 856 F.2d at 1440 (quoting Henderson v. Duncan, 779 F.2d
15 1421, 1423 (9th Cir. 1986)). "The first two of these factors
16 favor the imposition of sanctions in most cases, while the
17 fourth factor cuts against a default or dismissal sanction.
18 Thus the key factors are prejudice and availability of lesser
19 sanctions." Wanderer v. Johnson, 910 F.2d 652, 656 (9th Cir.
20 1990).

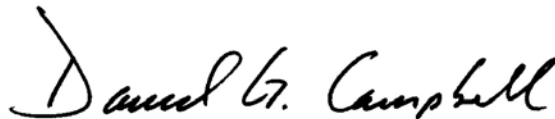
21 Here, the first, second, and third factors favor
22 dismissal of this case. Plaintiff's failure to keep the Court
23 informed of his address prevents the case from proceeding in the
24 foreseeable future. The fourth factor, as always, weighs
25 against dismissal. The fifth factor requires the Court to
26 consider whether a less drastic alternative is available.
27 Without Plaintiff's current address, however, certain
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1 alternatives are bound to be futile. Here, as in Carey, "[a]n
2 order to show cause why dismissal is not warranted or an order
3 imposing sanctions would only find itself taking a round trip
4 tour through the United States mail." 856 F.2d at 1441.

5 The Court finds that only one less drastic sanction is
6 realistically available. Rule 41(b) provides that a dismissal
7 for failure to prosecute operates as an adjudication upon the
8 merits "[u]nless the court in its order for dismissal otherwise
9 specifies." In the instant case, the Court finds that a
10 dismissal with prejudice would be unnecessarily harsh. The
11 Complaint and this action will therefore be dismissed without
12 prejudice pursuant to Rule 41(b) of the Federal Rules of Civil
13 Procedure.

14 **IT IS THEREFORE ORDERED** that pursuant to Rule 41(b) of
15 the Federal Rules of Civil Procedure this action is dismissed
16 without prejudice and the Clerk of the Court shall enter
17 judgment accordingly.

18 DATED this 19th day of July, 2006.
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David G. Campbell
24 United States District Judge
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